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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**GOOGLE INC.'S SUPPLEMENT
REGARDING PLAINTIFFS' MOTION
TO COMPEL PRODUCTION OF
DOCUMENTS**

Date: February 26, 2013
Time: 10:00 a.m.
Courtroom: 5, 4th Floor
Judge: Honorable Paul S. Grewal

1 Nothing in Plaintiffs' supplemental submission supports granting Plaintiffs' motion.

2 First, Plaintiffs do not contest that Bill Campbell was a "retained consultant" between 2002
3 and 2007 (Supp. 1:5-6), but point to the fact that Mr. Campbell did not sign the Consulting
4 Agreement in January 2002, the effective date of the Agreement. Plaintiffs fail to explain the
5 significance of this fact. Indeed, there is none. Mr. Campbell's deposition testimony reaffirms the
6 fact that he operated as the "functional equivalent of an employee" for Google since 2002. *See*
7 *Evans Decl. Ex A* (Campbell Tr. 172:19-173:5) (affirming the accuracy of his declaration, which
8 describes how he consulted on "Google's corporate and Business strategy" since 2002). [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 This evidence clearly demonstrates the existence and importance of Mr. Campbell's relationship
13 with Google since the effective date of the Consulting Agreement in 2002.

14 Moreover, Mr. Campbell had "an ongoing duty to Google to closely guard all "Confidential
15 Information" obtained during the course of my work for Google" since 2002. *See Campbell Decl.*
16 ¶4. This mirrors the obligations set forth in the Consulting Agreement, which "reflects and
17 memorializes the parties' understanding and practice with respect to Google's engagement" of Mr.
18 Campbell. *Id. Ex. A* (Preamble). The Consulting Agreement, therefore, reflects Google's and Mr.
19 Campbell's shared understanding of their relationship from the time it began in January 2002,
20 including Mr. Campbell's obligation to protect Google's Confidential Information.

21 Second, Google employees did, in fact, select particular confidential information to share
22 with Mr. Campbell—but that fact has no effect on his obligation to keep it confidential. If anything,
23 it underscores that Google was deliberative in disclosing confidential information to Mr. Campbell.

24 Third, Google does not contest that Mr. Campbell is subject to Intuit's Code of Conduct and
25 Ethics. But as Google has already shown, the Intuit Code of Conduct and Ethics is not a blanket
26 prohibition on personal use of Intuit computers and therefore weight against waiver. *In re Asia*
27 *Global Crossing*, 322 B.R. 247, 261 (Bankr. S.D.N.Y. 2005). Nor have Plaintiffs satisfied any of the
28 other *Asia Global Crossing* factors to support a finding of waiver here.

Dated: February 18, 2013

MAYER BROWN LLP

By: /s/ Lee H. Rubin

Lee H. Rubin

Attorneys for Defendant GOOGLE INC.

ATTESTATION: Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of this document has been obtained from the signatory.